

In the matter of an application by the Canadian
Pacific Railway Company for the establishment of
a rate base and rate of return before

THE BOARD OF
TRANSPORT COMMISSIONERS
FOR CANADA

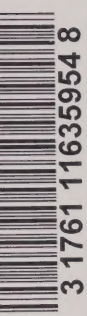
on January 5, 1953.

Evidence

tendered by
DR. VERNON C. FOWKE

on behalf of the
Respondents

THE PROVINCE OF BRITISH COLUMBIA
THE PROVINCE OF ALBERTA
THE PROVINCE OF SASKATCHEWAN
THE PROVINCE OF MANITOBA
THE MARITIMES TRANSPORTATION COMMISSION



CAI
TA 86
- 53E81

CAI
TA 86
- 53 E 81

In the matter of an application by the Canadian
Pacific Railway Company for the establishment of
a rate base and rate of return before

THE BOARD OF
TRANSPORT COMMISSIONERS
FOR CANADA

on January 5, 1953.

Evidence

tendered by

DR. VERNON C. FOWKE

on behalf of the
Respondents

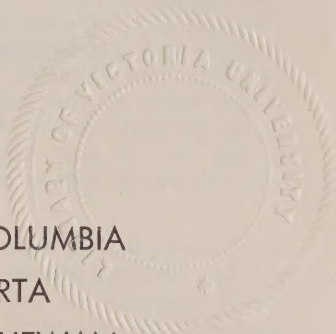
THE PROVINCE OF BRITISH COLUMBIA

THE PROVINCE OF ALBERTA

THE PROVINCE OF SASKATCHEWAN

THE PROVINCE OF MANITOBA

THE MARITIMES TRANSPORTATION COMMISSION



FOREWORD

The historical analysis outlined in the following pages was presented as evidence in hearings before the Board of Transport Commissioners held in Ottawa in January 1953. It formed a part of the reply to the application of the Canadian Pacific Railway Company for the establishment of a rate base and rate of return. The citizens of eight provinces—British Columbia, Alberta, Saskatchewan, Manitoba, Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland—opposed the application of the Company and expressed that opposition before the Board of Transport Commissioners. These provinces were unanimously of the opinion that the facts outlined in the following pages constituted convincing evidence that the application of the Canadian Pacific Railway Company for the establishment of a rate base and rate of return ought not to be granted. This evidence and its presentation before the Board of Transport Commissioners had, therefore, the unequivocal support of all respondent provinces.

The Government of the Province of Saskatchewan has been a continuous participant in the proceedings before the Board of Transport Commissioners relating to the application of the Canadian Pacific Railway Company for the establishment of a rate base and rate of return. The Technical and Economic Committee on freight rates, which was established in November 1946, has been actively engaged in the analysis and preparation of materials to serve as a guide in the formulation of policy. The members of that Committee are: Dr. G. E. Britnell, Chairman; Dean F. C. Cronkite, Q.C.; Dr. V. C. Fowke; Mr. M. A. MacPherson, Q.C.; Dr. B. N. Arnason; and Mr. George Oliver, who also acted as Secretary. The evidence published in the following pages was prepared by Dr. Fowke in collaboration with the Chairman and other members of the Committee. The statement of summary and conclusions to be found in Section VIII was prepared by the Committee.

The Government of the Province of Saskatchewan has assumed responsibility for the publication of this evidence. The Government has done so because of a firm conviction that the facts recorded in the evidence are of the utmost relevance to contemporary issues relating to Canadian railway finance and that the satisfactory solution of these issues can be attained only with the active interest of a well-informed public. While the verbatim record of the submission is to be found in the official transcript of the Board of Transport Commissioners, that series is far from being readily accessible. The Government of Saskatchewan publishes this historical study of the Canadian Pacific Railway Company in order that it may circulate widely and thus become an integral part of the thinking of an informed Canadian public. The Government is confident that in this act of publication it is rendering a service of importance to the people of the province and of the nation.

On behalf of the Government of Saskatchewan, I take this opportunity of expressing appreciation for the work of Dr. Fowke in the preparation and the presentation of this material in evidence before the Board of Transport Commissioners. I also wish to thank those members of the Technical and Economic Committee who were associated with Dr. Fowke in this effort.

L. F. MCINTOSH,

Minister of Municipal Affairs.

October 7, 1953.

TABLE OF CONTENTS

I	INTRODUCTION.....	5
II	THE CANADIAN PACIFIC RAILWAY AND NATIONAL POLICY.....	6
III	THE CANADIAN PACIFIC RAILWAY BEFORE 1880.....	11
IV	THE OBLIGATIONS AND PRIVILEGES OF THE CANADIAN PACIFIC RAILWAY COMPANY UNDER LEGISLATIVE INSTRUMENTS OF 1881.....	14
V	THE PROVISIONS CONCERNING RATE REGULATION OF THE CANADIAN PACIFIC RAILWAY COMPANY.....	20
VI	THE DEVELOPMENT OF THE CANADIAN PACIFIC RAILWAY COMPANY.....	22
VII	THE AMENDMENTS OF 1902.....	29
VIII	SUMMARY AND CONCLUSION.....	32

THE PURPOSES, ORIGINS AND DEVELOPMENT
OF THE
CANADIAN PACIFIC RAILWAY COMPANY
AS A
CORPORATE ENTITY

I

This is a study of the Canadian Pacific Railway Company in historical perspective. It is presented on the basis of the conviction that historical facts are eminently relevant to the proper interpretation of current situations and circumstances and to the proper evaluation of present-day arguments and contentions.

The applicants in the action now before the Board have stated, in effect, that the Canadian Pacific Railway Company possesses a dual personality. They assume that the Company embodies within its person a railway enterprise and a non-rail enterprise. They assume that the railway enterprise constitutes an entity distinct and separate from what they call the "non-rail enterprises and investments" of the Company.

These assumptions raise questions of the most fundamental kind concerning the nature of the Canadian Pacific Railway Company. Such questions cannot be considered adequately in an historical vacuum. The Canadian Pacific Railway Company is over seventy years old. The concept of a Canadian Pacific railway is much older still. The Company emerged from the concept. The origins and inherent nature of the Company are understandable only in relation to the circumstances which surrounded its inception. An examination of the development of the Company indicates the extent to which that inherent nature has or has not been altered to the present day.

II

An examination of the legislative instruments¹ which established the Canadian Pacific Railway Company suggests that here is no ordinary private-enterprise company. Consideration of the historical background of the Company amply confirms this suggestion and goes far toward explaining it. The relationship between the charter instruments and the historical background may be expressed in the following way. The charter indicates that the basic purposes for which the Company was formed were to construct substantial sections of a Pacific railway—that is, a railway linking the rail structure of the Province of Canada with the Pacific coast; to take over the other portions of the Pacific railway which had been, or were being, built by the federal government; to acquire or construct lines which would provide the Company with access to the Atlantic seaboard and to acquire or construct an adequate complement of branch lines; to acquire ancillary facilities to the extent that such facilities would contribute to the creation of a well-rounded transportation and communication system; and finally, to operate the whole perpetually. The charter further indicates the extensive special concessions which Parliament offered and the Company agreed to accept as consideration for its contractual commitments.

All of the above points the charter instruments meticulously define but do not explain. An examination of historical circumstances is necessary to provide perspective, to explain the urgency of the need for a Pacific and transcontinental railway and to make clear the special nature of the corporate entity established to assure such a railway. The Canadian Pacific Railway Act of 1881 was, in fact, the third such Act—all identical in purpose although differing in detail—which was passed by the Canadian Parliament in the course of a decade. The proposals which resulted in the Canadian Pacific Railway legislation were by no means new but had taken shape throughout a quarter of a century before the eventual successful legislative enactment. Under such circumstances it is readily apparent that the citation of the bare wording of the statute may be inadequate to provide full perspective on the purposes and objectives for which the Company was established. It is necessary to explore the background briefly.

Historical materials clearly indicate the Canadian Pacific Railway Company to be an instrument of National Policy. The National Policy gradually took shape in the British North American colonies after the middle of the nineteenth century and was directed toward the unification of those territories on a national basis. The impelling circumstance behind this policy was that a variety of economic and political difficulties which beset the individual colonies were insuperable as long as the colonies pursued their independent ways. Union, with all its inevitable compromise and commitment, was no where particularly welcome but it became increasingly clear that political and geographic combination on a widely inclusive basis offered the only realistic prospect of survival. The economies of the United Province of Canada on the St. Lawrence and of the maritime regions were complementary to a significant extent. Political union would provide a customs union and the removal of inter-colonial tariff barriers. The remaining and unavoidable geographic barrier of barren distance which intervened could be effectively surmounted only by the construction of a railway. An intercolonial railway to join the St. Lawrence and the maritime colonies was an indispensable instrument of colonial union.

¹ The Dominion Statute, 44 Vic. c. 1 (1881), *An Act respecting the Canadian Pacific Railway*, ratified the contract between the Dominion Government and the group which, under the contract, secured incorporation as the Canadian Pacific Railway Company. The contract constituted a schedule appended to the Act while the terms of the charter of incorporation formed, in turn, Schedule A appended to the contract.

The possibility of political and economic union between the St. Lawrence and the maritime colonies offered distinct but limited prospects for the improvement of existing conditions of life in these separate areas. No one could seriously argue in the mid-nineteenth century that a union involving these territories alone would be anything but incomplete and inadequate. Canadians already had experience with a partial union, an experience which began with the establishment of the United Province of Canada in 1841. The experience was not reassuring. To unite the Province of Canada with the Maritimes would, of course, considerably enlarge the unit, but it would nevertheless remain but a part and an inadequate part of the British North American territories. Beyond the Great Lakes lay the vast and little known spaces of Rupert's Land, the allegedly worthless but nonetheless jealously guarded game preserve of the Hudson's Bay Company. On the Pacific coast were the colonies of British Columbia and Vancouver Island. Gold discoveries in British Columbia followed shortly after the discoveries in California and attracted Canadian and British attention to the western continental limits of British American territory as the California gold strikes had attracted the American.

The Canadian project of nation building owed a great deal to the American venture of the same sort which had had its origins three-quarters of a century before. The Thirteen Colonies laid the groundwork for the American nation following their cession from the British Empire. Gradually the American national sphere of economic and political activity expanded to the westward throughout the latter part of the eighteenth century. The movement rapidly gained momentum in the early decades of the nineteenth century. By the mid-nineteenth century the American frontiers were on the Mississippi and on the Pacific. The northern limits of the American domain were nominally set by treaty obligation at the 49th parallel of latitude, but such location of the boundary was wholly arbitrary. That the 49th parallel constituted an effective division between American and British territorial aspirations or claims was as yet an empty legal fiction to which events might well deny any trace of reality. Americans had approached the Oregon boundary dispute in the eighteen-forties in the spirit suggested by their slogan, "Fifty-four forty or fight." The establishment of the 49th parallel as the boundary through the Oregon territory to the Pacific coast in 1846 represented a partial American defeat, but a defeat regarded by many as of a purely temporary nature. Simultaneously, American publicists rallied to the banner of 'Manifest Destiny,' the concept defined in the years of its early effectiveness as "the right of our manifest destiny to overspread and to possess the whole of the continent which Providence has given us for the development of the great experiment of liberty and federated self-government entrusted to us."²

With the eighteen-sixties there came new developments to add bone and sinews to the continental aspects of American Manifest Destiny. American Pacific railways were chartered and built. The Union Pacific was chartered in 1862 to link up with the Central Pacific and thus to provide the first transcontinental rail connections in the United States by joining the eastern railway network to the California coast.³ This project was completed in 1869. The Northern Pacific was chartered in 1864 with a project to link the Great Lakes area with the north Pacific coast.

² From a statement by John L. O'Sullivan in the *New York Morning News*, December 27, 1845, as cited by Albert K. Weinberg in *Manifest Destiny: A Study of Nationalist Expansionism in American History* (Baltimore, 1935), p. 145.

³ Eastern American railways did not as yet extend beyond the western boundaries of the State of Iowa but the Union Pacific was projected westward from Omaha, Nebraska. The Central Pacific had its western terminus at Sacramento.

The implications of the northward and westward march of the American railway system could not escape observation by Canadians. If there were any doubts concerning the matter the Americans went far to remove such doubts by public acts and by public and private utterances. A bill providing for the absorption of all British North American territories into the American Union was introduced into the United States House of Representatives in 1866.⁴ This bill was defeated. In 1867 Senator Ramsey of Minnesota moved that the Committee on Foreign Relations investigate the desirability of a treaty between the United States and Canada which, among other things, would provide for the American annexation of all territories west of longitude 90 degrees. He emphasized the urgency of the resolution in the following words:⁵

"We are informed that a member of the Government of Canada is about to present to Parliament a bill for the extension of the dominion of Canada to the Pacific Ocean. The authorities of British Columbia having applied for admission to the Canadian federation, the passage of such an act by the Parliament at Ottawa, with the assent of the queen in council will consummate the annexation of northwest British America to Canada. The people of the Selkirk settlement, north-west of Minnesota, and the people of British Columbia on the Pacific coast would prefer admission to the American Union; and I believe it has become the duty of the American Congress to indicate openly and distinctly the terms and conditions which we are willing to offer as an alternative to the Canadian overture."

Although Senator Ramsey's resolution was tabled for the time being it was brought forward again in 1868 and passed with minor amendments. The Senate Committee on Pacific Railroads, to which the resolution was then referred, apparently regarded it as a matter which need not be rushed but which could have but one outcome and that favourable to the American desire for territorial expansion. The Senate Committee regarded American railway construction near to the international boundary as pointing inevitably to annexation. Their report contained the following comments:⁶

"The line of the North Pacific runs for 1,500 miles near the British possessions and when built will drain the agricultural products of the rich Saskatchewan and Red River Districts east of the mountains, and the gold country of the Fraser, Thompson, and Kootenay Rivers west of the mountains. . . . The opening by us first of a North Pacific Railroad seals the destiny of the British possessions west of the 91st meridian. They will become so strongly Americanized in interests and feelings that they will in effect be severed from the new Dominion and the question of their annexation will be but a question of time."

In 1869 an annexation petition was circulated in Victoria and secured over forty signatures. This was forwarded to the American President. In 1870 an additional sixty-one signatures were secured and forwarded to the same destination. As late as 1870 there remained a strong and hopeful annexation group among the citizens of Vancouver Island. They were ably represented in the Legislative Council of the province by elected representatives under the leadership of Dr. Helmcken. In the Confederation debates of the British Columbia Legislative Council in March, 1870, Dr. Helmcken summarized the views of the group, the members of which stood in opposition to the Confederation policy of the administration, in the following words:⁷

⁴ See F. W. Howay, W. N. Sage and H. F. Angus, *British Columbia and the United States* (Toronto, 1942), p. 196.

⁵ *Ibid.*, p. 198.

⁶ *Ibid.*, p. 199.

⁷ *Ibid.*, p. 215.

"No union between this Colony and Canada can permanently exist, unless it be to the material and pecuniary advantage of this Colony to remain in the union. The sum of the interests of the inhabitants is the interest of the Colony. The people of this Colony have, generally speaking, no love for Canada; they care, as a rule, little or nothing about the creation of another Empire, Kingdom, or Republic; they have but little sentimentality, and care little about the distinctions between the form of Government of Canada and the United States.

"Therefore no union on account of love need be looked for. The only bond of union outside of force - - - and force the Dominion has not - - - will be the material advantage of the country and the pecuniary benefit of the inhabitants. Love for Canada has to be acquired by the prosperity of the country, and from our children."

The British North America Act of 1867 federated four eastern provinces and provided for the entrance of the remainder of the British North American territories and colonies into the federation. The long and short of the matter was, however, that eventual federation from coast to coast remained very much in doubt. The Americans were almost as covetous of the territories to the north of the 49th parallel as were the Canadians. The international boundary as then constituted would be meaningless unless Canadian treaty rights in the western territories could be established by effective economic occupation. The Pacific colony was in a particularly strong bargaining position with its seaport possibilities, its gold resources and other obvious economic advantages. It was particularly desired by both the United States and Canada. Many of its residents were inclined to await the highest bidder. The whole of the Canadian west, however, lay in the balance. Sir John A. Macdonald stated a reasonable interpretation of the situation concisely in a personal letter written early in 1870. In this letter he said in part:⁸

"Many thanks for your letter of the 26th, giving me an account of your conversation with - - - . It is quite evident to me, not only from this conversation, but from advices from Washington, that the United States Government are resolved to do all they can, short of war, to get possession of the western territory, and we must take immediate and vigorous steps to counteract them. One of the first things to be done is to show unmistakably our resolve to build the Pacific Railway."

It will be noted that Macdonald spoke of "the" Pacific railway rather than of "a" Pacific railway. The letter containing these comments, written in 1870, pre-dated the earliest Pacific railway legislation and pre-dated even the union agreement with British Columbia which first embodied the commitment that a Pacific railway would be built. Yet Macdonald's use of the definite article was not accidental. It was simply an indication of the fact that the construction of a railway linking the eastern British colonies with the Pacific and running through British territory had long been considered a distinct possibility and, by 1870, had come to be regarded as indispensable. American continental imperialism, thinly disguised beneath the euphemism of Manifest Destiny, rendered imperative an effective Canadian counter-imperialism of national scope. The threat inherent in the American Pacific railways which were constructed or projected in the eighties elevated the Canadian Pacific railway from the realm of surmise to the level of urgent necessity.

It would be quite incorrect to leave the impression that the pressures working toward the construction of Pacific railways in Canada and the United States

⁸ From a letter from Sir John A. Macdonald to C. J. Brydges, dated from Ottawa, January 28, 1870. See Sir Joseph Pope, *Memoirs of the Right Honourable Sir John Alexander Macdonald, G.C.B.* (Toronto, 1894), pp. 524-5.

were exclusively confined to the economic life of the North American continent. The first fact concerning the land masses of the western hemisphere which was of any significance to European discoverers was that they constituted a tremendous barrier lying across a possible water route from Europe to the Indies. Throughout the centuries which succeeded the voyages of Columbus, Europeans never abandoned the search for the North-West Passage. By the end of the eighteenth century it was apparent that such a passage, entirely by open water, did not exist. The western continents would have to be circumvented, as they could be by way of hazardous Cape Horn, or portaged, as they might be at the Isthmus of Panama or at other places where the extent of land was immensely greater. Not till railway technology was well advanced, however, as it was by the middle of the nineteenth century, was there any serious possibility of a trade route from Europe to the Orient across rather than around the Americas. By the same date, new commercial contacts and concessions had been established between European countries, notably Britain, on the one hand, and far eastern countries such as China and Japan, on the other.

Under these circumstances it became apparent that Pacific railways were potential and essential allies of any group or region desirous of competing effectively in the renewed world rivalry for the far-eastern trade. Among the most telling of the arguments for or against the various projected routes of a Pacific railway in the United States were those related to the Asiatic trade. The reference made to the Asiatic trade by the American Senate Committee on Pacific Railroads in 1868⁹ is merely a striking example of the type of reference which pervaded the railway literature of the Confederation and post-Confederation period. Speaking of the Northern Pacific Railway then under construction in the United States the Committee said:

"From China (Canton) to Liverpool it is 1500 miles nearer by the 49th parallel of latitude, than by the way of San Francisco and New York. This advantage in securing the overland trade from Asia will not be thrown away by the English, unless it is taken away by our first building the North Pacific road, establishing mercantile agencies at Puget Sound, fixing mercantile capital there, and getting possession on land, and on ocean, of all machinery of the new commerce between Asia and Europe."

A Canadian Pacific railway was regarded by the British and Canadians as essential within the same context of circumstances in order that the trade between Europe and Asia might not all be lost to the Americans but might rather move across the continent through British territory and *via* Canadian transportation and commercial facilities. In 1851, Allan McDougall of Toronto urged the construction of a railway from the Great Lakes to the Pacific. In advocacy of his proposal he published a pamphlet entitled, "A Railroad from Lake Superior to the Pacific: The shortest, cheapest and safest communication for Europe with Asia."¹⁰

In global, and even in Empire, perspective the project for a Canadian Pacific railway as advanced after the middle of the nineteenth century was a project for a portage railway between the waters of the Atlantic and the Pacific. Its broadest commercial purpose was to facilitate and expedite the transshipment of goods as they moved in trade between Europe and the Far East, and to draw this transshipment trade through Canada in competition with the United States. Steamship services on the Pacific and on the Atlantic had but to be linked by a transcontinental railway to form an integrated, Canadian trade and transportation system between Europe and the Far East.

⁹ See the *Report of the Senate Committee on Pacific Railroads* as cited in Howay, Sage and Angus, *op cit.*, p. 199.

¹⁰ See S. J. McLean, "National Highways Overland," in *Canada and its Provinces* (Toronto, 1914), Vol. 10, p. 420.

III

The construction of the Pacific railway became a contractual obligation of the Dominion government as part of the terms of union under which British Columbia entered Confederation in 1871. The Dominion, in effect, outbid the United States for possession of the coastal colony and the pledge to construct the Pacific railway was by far the most onerous of the commitments undertaken to secure such possession. There was also, of course, the question of establishing effective ownership of the central plains and the early construction of a railway link through these regions was recognized as pre-requisite to this purpose as well. The terms of union agreed upon between the province of British Columbia and the Dominion contained the following condition:¹¹

"The Government of the Dominion undertake to secure the commencement simultaneously, within two years from the date of union [later established at July 20, 1871], of the construction of a railway from the Pacific towards the Rocky Mountains, and from such point as may be selected east of the Rocky Mountains towards the Pacific, to connect the seaboard of British Columbia with the railway system of Canada; and further, to secure the completion of such railway within ten years from the date of union."

The government of British Columbia on its part agreed to convey lands to the Dominion government in furtherance of this project similar in extent to the amount which the Dominion appropriated therefor from the public lands of the North-West Territories and the province of Manitoba.

The commitment made by the Dominion government to build the Pacific railway within ten years alarmed many of the supporters, as well as the political opponents, of the government of the day. To allay their fears a resolution was introduced into the Dominion House and, after considerable debate and modification, was accepted by the House in the following form:¹²

"That the railway should be constructed and worked as a private enterprise, and not by the Government, and that the public aid to be given to the enterprise should consist of such liberal grants of land, and such subsidy in money or other aid not increasing the present rate of taxation."

The Liberals—then in Opposition—attempted to have this resolution incorporated into the terms of union between the Dominion and British Columbia, but were over-ruled. The claim was in fact frequently urged in later years that the commitment of the Dominion government to British Columbia was conditional upon this resolution. Such a claim could not be supported in view of the facts of the case. Nevertheless this resolution provided the accepted pattern of the federal government's approach to the Pacific railway thereafter, a pattern modified in the name of expediency by both political parties but never repudiated by either. After 1871 it was taken for granted in Canadian public life that the Pacific railway was to be built by private enterprise aided by grants of land, money subsidies and other assistance to an extent which would occasion no increase in the rate of federal taxation.

¹¹ From Terms of Agreement of Entrance of British Columbia in Union, as cited by H. A. Innis in *A History of the Canadian Pacific Railway* (London and Toronto, 1923), Appendix "A", p. 295.

¹² Canada, House of Commons, *Debates*, April 11, 1871, as cited by Mr. Blake in *ibid.*, April 15, 1880, p. 1426.

The Canadian Pacific Railway Act of 1881 was the third such Act passed by the Canadian Parliament. Nine years and two changes of government intervened between the first and third of these enactments. The statute of 1881 was the second such measure enacted by a Conservative administration, and a Liberal administration also placed a Canadian Pacific Railway Act on the statute books. These statutes were as follows: *An Act respecting the Canadian Pacific Railway*, passed by the Conservative administration in 1872,¹³ *An Act to provide for the Construcion of the Canadian Pacific Railway*, passed by the Liberal administration in 1874,¹⁴ and *An Act respecting the Canadian Pacific Railway*, passed by the Conservative government in 1881.¹⁵

There is no purpose in examining the earlier Canadian Pacific Railway Acts in any detail. It is worthwhile, however, to point out the features which these Acts had in common with each other and with the Act of 1881. The three Acts were directed toward the same purpose, the construction of the Pacific railway in specific fulfillment of the pledge made to British Columbia that this railway would be built. All the Acts defined the Pacific railway in almost identical terms as a railway to extend from the south of Lake Nipissing to the Pacific Coast. The Acts of 1872 and 1874 referred specifically—and the Act of 1881 by implication—to the resolution passed in the 1871 session concerning private enterprise and the prohibition against any increase in taxation. The wording of the Act of 1872 on this point is as follows:

And whereas, the House of Commons of Canada resolved during the said now last session, that the said railway should be constructed and worked by private enterprise and not by the Dominion Government; and that the public aid to be given to secure that undertaking, should consist of such liberal grants of land, and such subsidy in money, or other aid, not increasing the present rate of taxation, as the Parliament of Canada should thereafter determine; . . .

The whole line of the said railway shall be made and worked by private enterprise, and not by the Dominion Government, and by one company . . .

The Act of 1874 was introduced and passed by a Liberal administration. There is a common view that this administration repudiated the private-enterprise basis established by their Conservative predecessors for the construction and operation of the Pacific railway. This view is not clearly supported by the Act of 1874. It is true that the Liberals organized no Pacific railway company and that the varied and considerable preliminary work, including construction, which

¹³ 35 Vic. c. 71 (assented to 14th June, 1872).

¹⁴ 37 Vic. c. 14 (assented to 26th May, 1874).

¹⁵ 44 Vic. c. 1 (assented to February 15, 1881).

The Canadian Pacific Railway Company created in 1881 was the fourth company incorporated by the Dominion government in its effort to fulfill the pledge to provide a Pacific railway. The Conservative government chartered two railway companies in the session of 1872, the Canada Pacific Railway Company and the Interoceanic Railway Company, both desirous of securing the franchise to build the Pacific railway. Following the failure of governmental efforts to secure the amalgamation of these companies, the government incorporated a second and modified Canadian Pacific Railway Company. The latter company failed to meet its initial commitments.

they accomplished toward the Pacific railway during their term of office, was conducted by government employees or by contractors under government contract. The Act of 1874 provided that the government might secure the construction of the Pacific railway by contracting for the work on its various sections, the contractors to receive a subsidy per mile of completed line of \$10,000 and a maximum of 20,000 acres of land "of fair average quality." Section 8 (sub-section 8) of the Act provided that "Each section or sub-section of the said railway, as it is in whole or in part completed, shall be the property of the contractors for the same, and shall be worked by and for the advantage and benefit of such contractors under such regulations as may, from time to time, be made by the Governor in Council [concerning rates, service, etc.]." In a later section of the Act (section 10) the government reserved the right to purchase the various sections of the railway from the contractors upon completion. Section 12 of the Act provided that "In case it shall be found by the Governor in Council more advantageous to construct the said railway or any portion thereof, as a public work of the Dominion of Canada, the construction thereof shall be let out by contracts offered to public competition"

All in all the Act of 1874 left the Liberal government free to secure the construction of the Pacific railway by either private or public enterprise. The administration carried on preliminary surveys and construction under governmental contract from 1874 to 1878 but in 1878 advertised for tenders for the construction of the entire line on the basis of cash and land subsidies.¹⁶ In 1880 Edward Blake summarized the Pacific railway policy of the Liberal administration from 1874 to 1878 in the following comments:¹⁷

"This second Act [the Canadian Pacific Railway Act of 1874] recited expressly all the previous resolutions against the increase of taxation. It recited that the taxation had been, to some extent increased in order to meet the obligations of the Dominion, and declared that it was proper to provide for the construction of the road as rapidly as the work could be accomplished without further raising the rate of taxation; and, the former scheme having failed and it being impossible now to assume that the road could be constructed by means of a company, power was given by the Government to build sections as a Government work; but the avowed and stated policy of the [Liberal] Administration was to use that power only for the purpose of doing some parts of the work in advance of the completion of the surveys for the through line; and it has been repeatedly explained, by my hon. friend, the member for Lambton [Hon. Mr. MacKenzie], that his intention was, as soon as the surveys were completed, to submit the whole of the road to tender, on a land and money basis, the contractors taking over, as cash on account, the works meantime executed by the Government. It was a scheme devised to make progress where, and so far as progress could be made consistently with the resolution against increased taxation"

¹⁶ See Canada, House of Commons, *Debates*, 1880, pp. 1431-2.

¹⁷ *Ibid.*, p. 1428.

IV

The Canadian Pacific Railway Company which was created in 1881 was incorporated for two basic purposes: first, to complete those portions of the Canadian Pacific Railway which were not yet completed or under government contract, and, second, to operate the entire line of the Canadian Pacific Railway in perpetuity when completed. The contract between the government and the Canadian Pacific Railway Company said in definition that "the words, 'Canadian Pacific Railway,' are intended to mean the entire railway, as described in the Act thirty-seventh Victoria, chapter fourteen." This was the Act of 1874, and its description of the Canadian Pacific Railway is found in section 1 which is as follows: "A railway to be called the 'Canadian Pacific Railway' shall be made from some point near to and south of Lake Nipissing to some point in British Columbia on the Pacific Ocean, both the said points to be determined and the course and line of the said railway to be approved by the Governor in Council." The contract of 1881 provided (in sections 3 to 6) that the Company should construct and equip the Eastern section of the line, running from Callander Station to a juncture with the Lake Superior section, and the Central section, running from Selkirk to Kamloops; it provided further that the government should complete or construct the Lake Superior section, running from a juncture with the Eastern section to Selkirk, and the Western section, from Kamloops to Port Moody. All sections of the line were to be completed, equipped and placed in running order by May 1, 1891. The sections constructed by the government (including the Selkirk-Emerson branch) were to be conveyed on completion to the Company, without equipment. The Company was to equip these sections as well as those which it constructed itself. All sections were to be constructed of a uniform gauge of 4 feet 8½ inches, and as an "approximate standard" of quality for both the line and its equipment "the Union Pacific Railway of the United States as the same was when first constructed, [was] selected and fixed as a standard." (Contract, section 3).

The specific obligations of the Company were set forth in sections 7 and 9 of the contract:

7. The railway constructed under the terms hereof shall be the property of the Company: . . . and the Canadian Pacific Railway shall become and be thereafter the absolute property of the Company. And the Company shall thereafter and for ever efficiently maintain, work and run the Canadian Pacific Railway.
9. In consideration of the premises, the Government agrees to grant to the Company a subsidy in money of \$25,000,000 and in land 25,000,000 acres, for which subsidies the construction of the Canadian Pacific Railway shall be completed and the same shall be equipped, maintained and operated . . .

From the above analysis it can be seen that the basic obligation of the Company under the contract of 1881 related to the construction of specific sections of, and the equipment and perpetual maintenance and operation of the whole of, the Canadian Pacific Railway as defined in the Act of 1874. As so defined the Canadian Pacific Railway constituted a line of railway from near the south of Lake Nipissing to a point in British Columbia on the Pacific coast. As described more specifically in the contract of 1881 this line was to run from Callander Station to Port Moody. The articles of incorporation, appended to the contract as Schedule A, defined the Canadian Pacific Railway in a broader context to which reference will be made below.

In consideration of the obligations accepted by the Company the government agreed to grant an imposing list of material benefits to the Company. The basic subsidy comprised \$25,000,000 and 25,000,000 acres of land. The utmost

care was taken in the contract to assure that the land should be of good quality. The grant was to be selected from the uneven numbered sections in a railway belt twenty-four miles deep on either side of the railway line from Winnipeg to Jasper House. But in this belt, the contract provided, "should any of such sections consist in a material degree of land not fairly fit for settlement, the Company shall not be obliged to receive them as part of such grant." This proviso might, however, create a deficiency in the grant and this the contract dealt with in the following words (section 11):

... the deficiency thereby caused, and any further deficiency which may arise from the insufficient quantity of land along the said portion of railway, to complete the said 25,000,000 acres, or from the prevalence of lakes and water stretches in the sections granted (which lakes and water stretches shall not be computed in the acreage of such sections), shall be made up from other portions in the tract known as the fertile belt, that is to say, the land lying between parallels 49 and 57 degrees of north latitude, or elsewhere at the option of the Company, by the grant therein of similar alternate sections extending back 24 miles deep on each side of any branch line or lines of railway to be located by the Company . . . ; or of any common front line or lines agreed upon between the Government and the Company, the conditions hereinbefore stated as to lands not fairly fit for settlement to be applicable to such additional grants. And the Company may, with the consent of the Government, select in the North-West Territories any tract or tracts of land not taken up as a means of supplying or partially supplying such deficiency. But such grants shall be made only from lands remaining vested in the Government.

The contract provided for an additional substantial grant of land to the Company in the following words (section 10):

In further consideration of the premises, the Government shall also grant to the Company the lands required for the road-bed of the railway, and for its stations, station grounds, workshops, dock ground and water frontage at the termini on navigable waters, buildings, yards and other appurtenances required for the convenient and effectual construction and working of the railway, in so far as such land shall be vested in the Government.

And similarly for branch lines (section 14):

And the Government shall grant to the Company the lands required for the road-bed of such branches, and for the stations, station grounds, buildings, workshops, yards and other appurtenances requisite for the efficient construction and working of such branches, in so far as such lands are vested in the Government.

The government was to extinguish the Indian title in any lands thus granted.

The Company was to be allowed to take all stone, gravel and "other materials which may be necessary or useful for the construction of the railway" from any public lands adjacent to or near the railway (articles of incorporation, sec. 19). Certain provisions of *The Consolidated Railway Act* of 1879 concerning rights in beach property and extent of land for structures were specifically enlarged in favour of the Company (articles of incorporation, ss. 18, 19). In the wording of section 19 of the articles of incorporation it was permitted to the company,

to lay out and appropriate to the use of the Company, a greater extent of lands, whether public or private, for stations, depots, workshops, buildings, side-tracks, wharves, harbours and roadways, and for establishing screens against snow, than the breadth and quantity mentioned in *'The Consolidated Railway Act, 1879,'*—such greater extent taken, in any case, being

allowed by the Government, and shown on the maps or plans deposited with the Minister of Railways.

A further grant to the Company, with a monetary value quite determinate, was embodied in the provision of the contract requiring the government to complete the Lake Superior and Western sections of the railway and to convey them upon completion to the Company, without cost to the Company. The Selkirk to Emerson branch, constructed by the government and already in operation, was included in this grant. The amount of line involved was 713 miles. Estimates of the cost of this line at the time of the ratification of the agreement varied from thirty-five to thirty-eight million dollars. The cost was later placed at \$37,785,320.¹⁸

A number of further concessions were made to the Company, each concession of undoubted if indeterminate monetary value. The government agreed to admit free of duty all steel rails and a wide variety of other materials used in the construction of the railway and of a telegraph line in connection therewith. All telegraphic apparatus required for the first equipment of the telegraph line was also to be free of duty.

The government agreed to a wide measure of tax exemption. Section 16 of the contract provided that:

The Canadian Pacific Railway, and all stations and station grounds, workshops, buildings, yards and other property, rolling stock and appurtenances required and used for the construction and working thereof, and the capital stock of the Company, shall be for ever free from taxation by the Dominion, or by any Province hereafter to be established, or by any Municipal Corporation therein; and the lands of the Company, in the North-West Territories, until they are either sold or occupied, shall also be free from such taxation for 20 years after the grant thereof from the Crown.

Section 15 of the contract (later commonly known as the monopoly clause) prohibited for twenty years the construction of any line of railway to the south of the Canadian Pacific Railway except for any line which might run south-west or to the west of south-west and not within fifteen miles of the international boundary.

As noted above, the basic obligations of the Canadian Pacific Railway Company under the contract of 1881 related to the line of railway from Callander Station to Port Moody. This line was far from constituting a railway system, much less a transcontinental and intercontinental transportation and communication system. Prospects for traffic and earnings would be negligible for the Pacific railway line as an isolated unit. The Company would require the maximum freedom to provide and control transportation and communication facilities in areas geographically contiguous to the Pacific railway line in order that traffic prospects might be raised to reasonable proportions.¹⁹ The legal instruments which created the Canadian Pacific Railway Company accordingly contemplated the expansion of the Company's enterprise into a general transportation and communication system, intercontinental as well as transcontinental in scope.

¹⁸ See *Report of the Royal Commission to Inquire into Railways and Transportation in Canada* (Ottawa, 1917), p. xvi.

¹⁹ As a president of the Canadian Pacific Railway Company put it to the shareholders at a later date: "Had you stopped at the completion of your main-line across the Continent your enterprise would have come to ruin long ago, or at best it would have existed only as a sickly appendage of the Grand Trunk. Like a body without arms it would have been dependent upon charity,—upon the charity of a neighbour whose interest it would be to starve it." Cited by S. J. McLean, *op. cit.*, p. 434.

To transform a single trunk line, which started in northern Ontario and ended on the Pacific coast, into a railway *system*, the first pre-requisite would be a network of branch lines. The contract (section 14) gave to the Company the right to build and operate branch lines "from any point or points along their main line of railway, to any point or points within the territory of the Dominion." For such branch lines the government agreed to grant the lands necessary for the road-bed and for the necessary yards and structures. The articles of incorporation provided (section 15) that the Company might construct or acquire certain specific branch lines, namely, branches from the Canadian Pacific main line to Fort William, and the line already constructed by the government from Selkirk to Pembina (or Emerson). The latter branch line was to be turned over to the Company by the government.

Branch lines would not, however, convert the railway from Callander Station to Port Moody into a *transcontinental* railway system. The articles of incorporation of the Company recognized the wishes of the Company to engage in railway operation from coast to coast. Section 25 of Schedule A (articles of incorporation) provided that the Company,

under the authority of a special general meeting of the shareholders thereof, and as an extension of the railway hereby authorized to be constructed, may purchase or acquire by lease or otherwise, and hold and operate, the Canada Central Railway, or may amalgamate therewith, and may purchase or acquire by lease or otherwise and hold and operate a line or lines of railway from the City of Ottawa to any point at navigable water on the Atlantic seaboard or to any intermediate point, or may acquire running powers over any railway now constructed between Ottawa and any such point or intermediate point.

The railway lines as constructed or acquired by the Company under both the compulsive and the permissive provisions of the contract and articles of incorporation were collectively to constitute the Canadian Pacific Railway. These lines, comprising (1) "a continuous line of railway" from Callander Station to Port Moody, (2) branches from the main line to Fort William, (3) the existing branch line from Selkirk to Pembina, together with (4) "such other branch lines as shall be hereafter constructed by the said Company, and any extension of the said main line of railway that shall hereafter be constructed or acquired by the Company, shall constitute the line of railway hereinafter called The Canadian Pacific Railway." (Articles of incorporation, Section 15).

The national aspects of the Pacific railway project and of the Canadian Pacific Railway Company were nowhere more sharply emphasized at the time of the organization of the Company than in the discussions relating to the location of the main line of the Pacific railway. This line was repeatedly identified as one to run from Callander Station to Port Moody, but there were obviously several possible routes over which the line might connect these terminal points. The contract (Section 13) narrowed the range of possibilities only slightly in providing that the Company, subject to the approval of the government, might locate the line as they saw fit, "preserving the following terminal points, namely: From Callander Station to the point of junction with the Lake Superior section; and from Selkirk to the junction with the western section at Kamloops by way of the Yellow Head Pass."

The main point at issue was the location of the route between eastern Canada and the Red River. In general there were three possible ways of linking the railway system of eastern Canada with Fort Garry or Selkirk: (a) a line might be built or extended around the southern end of Lake Michigan from a juncture with the Grand Trunk Railway on the east and run to Fort Garry *via* Min-

neapolis-St. Paul; (b) a connection with the Canada Central Railway (under construction from Ottawa to Lake Nipissing) might cross into the States at the Sault, run to the south of Lake Superior and on to Fort Garry; and, finally (c) a line might be run from Lake Nipissing to Fort Garry or Selkirk to the north of Lake Superior, thus passing entirely through Canadian territory.

The most southerly of these routes, the Grand Trunk connection, had been dismissed from serious consideration by 1881. The middle route, however, the one to cross into the States at Sault St. Marie, remained a powerful and, to many, the only sensible, contender for acceptance. American railway interests were prepared to back such a route with pledges for construction. Even in Canada the middle route had strong supporters. The construction problems of the north shore route were so formidable and its traffic prospects so slender that only a sense of the national imperative could make it appear indispensable or even possible.

By 1881, however, the Conservative government was convinced that the Pacific railway must follow the north shore route and that this link must be built immediately, without the postponement urged by many thoughtful persons in and out of the House of Commons. The national economic and political considerations involved in the decision were set forward by Sir John A. Macdonald in an attack upon an Opposition proposal for a Pacific railway which envisaged indefinite postponement of the north shore link. This proposal and its ostensible effects Macdonald described as follows:²⁰

"[The proposal is one for] building an easy road across the prairies, and so connecting with the American system of railways, and carrying away the trade of the North-West by one or more American channels, to the utter ruin of the great policy under which the Dominion of Canada has been created, and to the utter ruin of our hopes of being a great nation, and to the ruin of our prospect of getting possession of the Pacific trade, and connecting Asia with England by a railway passing through the dominions of England."

As for the Conservative scheme, which required the north shore line in order that there might be constructed an all-Canadian railway, Macdonald went on:²¹

"I am proud to say that if our scheme is carried out, the steamer landing at Halifax will discharge its freight and emigrants upon a British railway, which will go through Quebec, and through Ontario to the Far West, on British territory, under the British flag, under Canadian laws, and without any chance of either the immigrant being deluded or seduced from his allegiance or his proposed residence in Canada, or the traffic coming from England or from Asia being subjected to the possible prohibitory or offensive restrictive taxation or customs regulations of a foreign power

"We desire to have the trade kept on our own side—that not one of the trains that passes over the Canadian Pacific Railway will run into the United States if we can help it, but may, instead, pass through our own country, that we may build up Montreal, Quebec, Toronto, Halifax and St. John by means of one great Canadian line, carrying as much traffic as possible by the course of trade through our own country."

²⁰ See Canada, House of Commons, *Debates*, 1881, p. 491.

²¹ *Ibid.*, pp. 491, 493.

The north shore route was indispensable to national purposes and was accordingly utilized.²² Construction was accomplished at tremendous cost.²³ The area continues to be relatively poor in traffic contribution and the railways which traverse it are fittingly spoken of as constituting a "traffic bridge."

Among the permissive clauses of the contract and articles of incorporation was one which envisaged the construction and operation of a communication system in connection with the railway business of the Canadian Pacific Railway Company. Section 16 of the articles of incorporation permitted the Company to construct (or acquire) and operate telegraph and telephone lines along their lines of railway or branching from such lines. The section further provided that the Company "may use any improvement that may hereafter be invented (subject to the rights of patentees) for telegraphing or telephoning, and any other means of communication that may be deemed expedient by the Company at any time hereafter."

The powers and privileges of the Company as reviewed up to this point were ample to permit the establishment of a well-rounded trans-continental railway and communication system. It remains to be noted that the articles of incorporation contemplated the operation by the Company of a comprehensive steamship service on the inland waters of Canada and upon the high seas. This was in keeping with the underlying view of the Canadian Pacific railway as an essential link in the Europe-to-Asia trade route, a land carrier which would effectively join the ocean services of the Atlantic with those of the Pacific. The need of the Company to assure adequate traffic control might well require it to extend its operations into the provision of steamship service upon the Pacific and Atlantic Oceans.

Section 26 of the articles of incorporation permitted the Company to engage in navigation activities with few restrictions. This section reads:

The Company shall have power and authority to erect and maintain docks, dockyards, wharves, slips and piers at any point on or in connection with the said Canadian Pacific Railway, and at all the termini thereof on navigable water, for the convenience and accommodation of vessels and elevators; and also to acquire, and work elevators, and to acquire, own, hold, charter, work and run steam and other vessels for cargo and passengers upon any navigable water, which the Canadian Pacific may reach or connect with.

And, finally, in order that no impediment might exist in the powers specifically granted, section 4 of the articles of incorporation provided that,²⁴

All the franchises and powers necessary or useful to the Company to enable them to carry out, perform, enforce, use, and avail themselves of, every condition, stipulation, obligation, duty, right, remedy, privilege, and advantage agreed upon, contained or described in the said contract, are hereby conferred upon the Company. And the enactment of the special provisions hereinafter contained shall not be held to impair or derogate from the generality of the franchises and powers so hereby conferred upon them.

22 "... in the light of the later Canadian Pacific extension through precisely this American territory [to the south of Lake Superior] as well as through Maine, there was much buncombe in the flag-waving answer made [to the Liberals' proposals for a line via Sault Ste. Marie]. Yet, on the whole, so necessary to national unity was an unbroken road, so hard a country was this to make one, that it was best to err on the side of safety. The political interests at stake warranted some risk of money loss." See Oscar D.

(Footnotes continued on page 20).

Special significance attaches to the provisions concerning rate control embodied in the legal instruments which created the Canadian Pacific Railway Company. The regulation provided for in these instruments has come to be regarded as one of remarkable leniency, but that is only by the standards of more recent times. The regulation as provided for the tolls of the Canadian Pacific Railway was, in fact, more restrictive than that which in 1881 was on the Canadian statute books as applying to railways other than the Canadian Pacific Railway. The Canadian Parliament regarded the latter Company as a special instrument designed for a special purpose, an unique creature, and they recognized the justification for exceptional restriction upon the Company's freedom of rate determination.

Provisions relating to ordinary railway companies in Canada were embodied in *The Consolidated Railway Act*, 1879, an amendment and consolidation of *The Railway Act* of 1868. The Act of 1879 provided (in section 17, sub-section 11) that the Parliament of Canada might, with the consent of a railway company, reduce the tolls charged by such company when an examination of its accounts indicated that the company's net income from all sources in the preceding year had exceeded fifteen per cent upon the capital actually expended in its construction. The reduction was not in any case to reduce the net income below fifteen per cent upon such capital. With regard to the tolls of the Canadian Pacific Railway Company the articles of incorporation of that Company provided as follows (section 20):

The limit to the reduction of tolls by our Parliament of Canada provided for by the eleventh sub-section of the 17th section of "*The Consolidated Railway Act*, 1879," respecting TOLLS, is hereby extended, so that such reduction may be to such an extent that such tolls when reduced shall not produce less than ten per cent per annum profit on the capital actually expended in the construction of the Railway, as such capital may be defined by an Act of our Parliament to be passed during the present session, instead of not less than fifteen per cent per annum profit, as provided by the said sub-section; and so also that such reduction shall

Skelton, *The Railway Builders, A Chronicle of Overland Highways* (Toronto, 1916), p. 146. The compulsion which led to the construction and utilization of the north shore segment of the Canadian Pacific Railway was one of the factors which prompted the late S. J. McLean to remark: "The signal commercial success which has attended this enterprise [the Canadian Pacific Railway Company] is the more remarkable because it was in its beginning a political undertaking." See McLean, "National Highways Overland," in *Canada and its Provinces*, Vol. 10, p. 424.

23 O. D. Skelton points out, for example, that construction of one particular mile of the north shore line cost seven hundred thousand dollars and that several miles cost half a million dollars each. One muskeg area, he says, holds seven layers of Canadian Pacific track, buried one below the other. See *The Railway Builders*, pp. 163-4.

24 Hon. Edward Blake said of section 4 of the articles of incorporation: "There is in this Bill one of the most extraordinary provisions. I dare say there may be found a precedent in some Act of a State Legislature, but I do not know of any. It is a grant of all powers, not merely necessary, but all powers which may be useful, in order to do all the various things they [the Company] are authorized to do by the charter, and I do not know of anything they are not authorized to do." See Canada, House of Commons, *Debates*, 1880-81, December 15, 1880, p. 96.

not be made unless the net income of the Company, ascertained as described in said sub-section, shall have exceeded ten per cent per annum instead of fifteen per cent per annum as provided by the said sub-section. And the exercise by our Governor General in Council of the power of reducing the tolls of the Company as provided by the tenth sub-section of said section seventeen is hereby limited to the same extent with relation to the profit of the Company, and to its net revenue, as that to which the power of Parliament to reduce tolls is limited by said sub-section eleven as hereby amended.

Without political prejudice it is nevertheless extremely difficult to find a more cogent expression of the significant elements involved in section 20 above than appears in the remarks of the Honourable Edward Blake. He said in part:²⁵

"The hon. gentleman [the Hon. Sir Charles Tupper, Minister of Railways and Canals] referred to the clause in the General Railway Act, and he glorified himself in the fact that the Government had been so careful of the interests of the country that they had actually imposed certain limitations upon this corporation which did not exist in the Railway Act. That Act says that 15 per cent profit shall be the minimum below which you shall not reduce the tolls; we have cut it down, he says, to the modest figure of ten. Now I need hardly observe that this corporation stands in a somewhat different position relatively to Parliament and to the country from the great mass of railways in Canada. The great mass of railways in this country have been constructed out of resources mostly provided by private individuals. Considerable sums have, from time to time, been given by way of aid or subsidy by the Government towards the construction of some lines, but the main portion of the capital of these railway companies is private capital. What restriction you may impose upon private capital so long as you depend upon private capital to take the risk of constructing a railway is one thing; what temptation you may deem it necessary to offer to private capital in order to induce it to enter into that channel is one thing; but the same considerations are not at all applicable to a case in which you say to some individuals: Gentlemen, we will give you as much and half as much again as is necessary to build this railway, and we will let you own it afterwards. It is not the work of private capital at all. These men will, for a little while, until they make some land sales, invest four or five millions which will be recouped to them within a very brief space of time, and then they will have this enterprise without having sunk a dollar of their own money in it, and will have millions of acres besides. In such persons, so situated, who are to run a railway which has been built by the country for them, we may fairly expect more rigid, instead of less rigid, limitations as to rates and fares, and a corporation, possessing such extensive privileges as these, such privileges for extending lines all through the North-West, and forestalling the construction of competing lines, such statutory privileges for preventing other people from building commercial lines which might interfere with them, on the express ground that their building might interfere with them—on such a corporation, possessing all these advantages, and with no disabilities, we may expect to impose more rigid limitations and regulations as to what they will give to the public for the great deal the public is giving them."

²⁵ *Ibid.*, pp. 98-99. Speaking retrospectively O. D. Skelton remarks: "... the fact remains that the bulk of the resources utilized in the original building of the road were provided or advanced by the people of Canada. The Canadian Pacific is as truly a monument of public as of private faith." See *The Railway Builders*, p. 159.

Any detailed examination of the development of the Canadian Pacific Railway Company from its beginnings in 1881 to the present time would be far beyond the scope of this analysis. A brief review of the development of the Company is, however, possible and essential.

Concerning the construction of the main line of the Canadian Pacific Railway, from Callander Station to Port Moody, it is little enough to describe it as one of the great modern epics. Few there were in the Canadian Parliament in 1881, whether supporters or opponents of the government, who were convinced that the Canadian Pacific Railway Company and the Canadian government would be likely to fulfill their mutual pledges to complete the road by 1891. Construction was so far advanced by 1883 and 1884, however, that the government was able to secure agreement from the Company, as part consideration for a loan, that the Company's share of the task would be completed by 1886, or within an over-all term of five instead of ten years. The "last spike" ceremony was performed on November 7, 1885, and on July 4, 1886, the first of the regular transcontinental passenger trains to cross the Dominion of Canada arrived in Port Moody from Montreal. Of the main line of the Canadian Pacific Railway from Callander Station to Port Moody the Company had constructed the eastern section, from Callander Station to Fort William, and the central sections, from Winnipeg to Kamloops. The government had meanwhile completed and transferred to the Company the Lake Superior section, from Fort William to Winnipeg, and the western section, from Kamloops to Port Moody.²⁶ An extension of fourteen miles added in 1887 brought the western terminus of the railway from Port Moody to Vancouver.

The location of much of the line had been changed from that of the route projected in 1881. Winnipeg rather than Selkirk was selected to form the junction between Lake Superior and the central sections. A change of far greater importance was involved in the choice of the Kicking Horse in place of the Yellow Head Pass as the route through the Rocky Mountains. The latter change was approved in general terms, or at least anticipated, by Parliament in 1882. The statute (45 Vic. c. 53) consisted of a brief preamble and one section, as follows:

The Canadian Pacific Railway Company may, subject to the approval of the Governor in Council, lay out and locate their main line of railway from Selkirk to the junction with the western section at Kamloops by way of some pass other than the Yellow Head Pass, provided that the pass be not less than one hundred miles from the boundary between Canada and the United States of America.

The change in the mountain pass was accompanied by a change in the location of practically the entire centre section of the line, from Winnipeg to Kamloops. The intention originally and as late as 1881 had been that the railway would be built north-westerly from Winnipeg or Selkirk to follow the arc of the Park Belt to Edmonton and Jasper House. Rather it was constructed on the whole due west from Winnipeg to the Kicking Horse Pass, going through the location of the cities of Regina and Moose Jaw instead of Saskatoon and through Calgary instead of Edmonton. The change of route placed the railway as much as two hundred miles or more to the south of the projected route, and through the heart of the semi-arid plains instead of through the Park Belt.

²⁶ In addition to the main line sections the government had transferred to the Company the Pembina branch, some 85 miles in length, running from Selkirk southward to Emerson on the boundary.

The Honourable Edward Blake envisaged the possibility of such a change in the location of the Canadian Pacific Railway in 1880. To him it was a disturbing prospect. He said in part:²⁷

"... they [the Canadian Pacific Railway Company] have the right to build anywhere; they have the right to choose their route—there is no restriction on them as to the course their railways are to take. They may go south with their main line. They may, instead of making it the backbone of that country, instead of placing it in the position approximately in which it is now placed, sweep down very much to the south and take into their main line the whole of the traffic, and thus prevent any kind of competition almost, and greatly deteriorate from the advantage of the railway as a great central line intersecting that country."

The construction of the eastern and central sections of the main line had been the first and only construction obligation placed upon the Canadian Pacific Railway Company by its charter. We have noted above, however, the wide range of permissive provisions in the charter. The Company lost no time in exercising practically all of these permissions. Before the end of 1881 the Company had acquired the Canada Central Railway connecting Callander Station with Ottawa and with projected mileage to Brockville, and had purchased the portion of the Quebec, Montreal, Ottawa and Occidental Railway (commonly called the North Shore Line) between Montreal and Ottawa, for \$4 million. By the end of 1882 a branch running south-west from Winnipeg to the boundary had been completed, and the line of the Canada Central from Carleton Place to Brockville had been placed in operation. Both branches provided linkage between the Canadian Pacific Railway and the railways of the United States. By means of the extensive acquisition of lines in 1883—lines which included the South Eastern Railway, the Algoma Branch, the Ontario and Quebec Railway, the Credit Valley Railway, and the Toronto, Grey and Bruce Railway—the Company secured contact with the Atlantic seaboard, and with the Great Lakes at Toronto, Owen Sound and Algoma. In 1884 the Company embarked on a policy of securing branch lines in Manitoba and the Territories beyond. The first step in the implementation of this policy after the construction of the branch from Winnipeg to the boundary was the acquisition by lease of the Manitoba and South-West Colonization Railway which ran south-west from Winnipeg.

The Canadian Pacific Railway Company had entered upon the exercise of other among its powers by the time its main line was complete and open for service. The introduction of Company steamships to the Great Lakes in 1884 to provide service between Owen Sound and Prince Arthur's Landing (Port Arthur) appears to have marked the entry of the Company into the field of water transportation so clearly opened to it by charter. The Canadian Pacific telegraph lines were complete from coast to coast by 1885, while the Company had been transmitting telegraphic messages for hire since 1882. Express service was inaugurated in 1882 under the charter of the Dominion Express Company, incorporated in 1873 and established in 1882 as a subsidiary wholly owned by the Canadian Pacific Railway Company. (In 1926 the name of this subsidiary was changed to the Canadian Pacific Express Company.) The Company acquired a grain elevator at Brockville in 1883; it built one at Port Arthur in 1884; and it built one at Fort William, one at Owen Sound and two at Montreal in 1885. The Company operated a sleeping-car service as an integral part of its passenger facilities beginning with its early operations.

Sir William Van Horne, who first entered the service of the Canadian Pacific Railway Company as general manager in 1881, was fully aware of the importance

²⁷ Canada, House of Commons, *Debates*, 1880-81, December 15, 1880, p. 98

of auxiliary services to the earning position of a railway. His biographer, Walter Vaughan, states that on Van Horne's arrival in Canada almost his first question to Stephen, president of the Canadian Pacific Railway Company, was, "Have you given away the telegraph, the express, the sleeping-cars?" On being assured that the Company had not done so, he urged that the auxiliary services be retained despite, or because of, the experience of American and other Canadian railway companies which had relinquished them to independent operators. "I expect," said Van Horne, "the side-shows to pay the dividend." His observation was, he said, that "express companies take all the cream off the parcel traffic and leave the skim-milk to the railroads."²⁸ In accord with his advice the Canadian Pacific Railway Company has, from the time of its inception, persisted in the policy of retaining the "side-shows" for the benefit of the Company.

Of the expansion of the Canadian Pacific Railway system after 1886 only certain points can be noted. Succeeding decades extending to 1930 saw a continuous expansion of branch and trunk lines by construction and by lease and ownership acquisition. This expansion took place in all parts of the Dominion and extended to the United States.

Notable among the extensions of Canadian Pacific Railway services into the United States was the acquisition of control by the Company over the Minneapolis, St. Paul and Sault Ste. Marie Railway (the Soo Line), which linked up the places as indicated in its name, and over the Duluth, South Shore and Atlantic Railway, which ran from Duluth to Sault Ste. Marie. These lines provided an obvious linkage at the Sault with the Algoma branch of the Canadian Pacific Railway. Under an agreement of 1887 the three companies constructed a bridge at the Sault in anticipation of mutual inter-change of traffic. The Minneapolis, St. Paul and Sault Ste. Marie Railway was in financial difficulties by 1888 and was given temporary aid by the Canadian Pacific Railway Company in return for a perpetual traffic agreement. Through-service connections were established at the Sault in 1889, but by this time both of the American railways were on the verge of default. The Canadian Pacific Railway Company assumed control over both roads in 1890 under agreements which included the guarantee by the Canadian company of the bond interest of the American roads.²⁹ As a defensive measure against J. J. Hill and the Great Northern Railway the Canadian Pacific Railway Company extended the Soo Line to the boundary at Portal and built southward from Moose Jaw to a juncture at that point. This was effected by 1893.

The construction of the Crow's Nest Pass Line in the eighteen-nineties was a significant extension of the operations of the Canadian Pacific Railway Company

²⁸ Walter Vaughan, *The Life and Work of Sir William Van Horne* (New York, 1920), p. 138.

²⁹ Special legislative provision was apparently thought to be necessary to permit the Canadian Pacific Railway Company to extend its railway operations beyond the national boundaries. This was contained in an Act of 1890 (53 Vic., c. 47) which gave authorization to the Canadian Pacific Railway Company as follows:

"7. The Company may make working arrangements with, or may lease or acquire running powers over or the right to work the line of, any railway company outside of Canada, upon such terms and conditions as the Company's board of directors considers advantageous. Provided, however, that every such transaction shall be subject to the approval of two-thirds of the votes of the shareholders of the Company present or represented at an annual general meeting or a special general meeting duly called for the purpose; and the Company may acquire and hold shares, bonds or other securities of any such railway company."

in pursuit of its "rounding-out" policy. Since this railway was projected as a branch line entirely within Canadian territory the Company required no enlargement of its original charter powers to permit the proposed construction. The intent of the Company was to secure control for itself over a tremendously promising traffic area and its purposes in the new enterprise were therefore not essentially different from the purposes involved in other branch-line construction throughout the history of the Company. National purposes were so clearly involved and the hazards of delay were so obvious and substantial, however, that the Dominion government offered and the Company accepted a new measure of subsidy assistance in return for an agreement which pledged construction of the line and the reduction of specific rates.

The point at issue for the Company and for the nation was the commercial mastery of a segment of Canadian territory lying close to the American boundary and endowed with a measure of economic promise which had but recently been displayed. Gold discoveries in the Kootenay Valley of British Columbia in the eighteen-eighties prompted intensive prospecting in the area which, in turn, led to the discovery of rich silver and base-metal properties and the development of a considerable mining activity. The north-south location of the mountain ranges and intervening valleys and the proximity of the mineral areas to the American boundary made the locality much more readily accessible to American territory and to American water and rail communications than to Canadian. Base-metal extraction involved smelting, a process which required adequate supplies of coking coal. Smelters were already located at the American coast and in the inland states. American railways were built northward into Canadian territory and the ores moved by waterway and over these railways to the American smelting centres. The whole area could readily have become a hinterland to the north-western states.

Such a development would have constituted a major breach in the national policy which required that economic development in Canadian territory should be integrated into the Canadian economy rather than the American. Canadian cities on the Pacific coast protested the threat to their commercial interests. The legislative assembly of the North-West Territories favoured the establishment of railway connections which would assure a market in the new mining areas of British Columbia for the agricultural products of the Canadian prairies in competition with similar produce from the State of Washington.

The Canadian Pacific Railway Company was vitally interested in assuring that the supply and outward movement of the produce of this region should move over Canadian Pacific lines instead of being drawn southward to move over American transcontinental railways. Here was one more area in which it was impossible to overlook the importance of increase and diversity of traffic for the assurance of their earnings position. In their Annual Report for 1889 the directors of the Company stated in part:³⁰

"While the results of the harvest will always be a matter of great importance as affecting the earnings of the railway, the past year has shown that it is already comparatively independent of the crops of any one Province or any one season. This is in part due to the vast extent and great diversity in the character of the territory covered by the lines of the Company, . . . in part to the development of mining and other industries not affected by local causes, and in part to the establishment of far-reaching connections whereby traffic may be gathered in case of need."

The Canadian Pacific Railway Company was specifically interested in the mineral developments taking place in the Kootenay and Columbia Valleys. There

³⁰ Canadian Pacific Railway, *Annual Report for the year 1889*, pp. 12-13.

were two problems, the first to improve the transportation facilities within the region, and the second to link the region with the main line of the Canadian transcontinental railway. Local transportation required the linking of the Columbia and the Kootenay Valleys by rail. As for the link between the region and the Canadian Pacific Railway main line, this could be effected by joining the Arrow Lakes to the transcontinental by a short, north-south branch line, or by building westward from a point on the main line on the plains, through the Crow's Nest Pass to the Kootenay mining territories.

From 1889 to 1896 the Canadian Pacific Railway Company was active in securing control of local transportation within the Kootenay-Columbia territory and in establishing rail connections between their main line and the Upper Arrow Lake. The Annual Report of the Company, for 1889 contains the following statement:³¹

"To prevent the invasion, by foreign lines, of the Kootenay District, in British Columbia—a district rich in precious metals and other natural resources—your Directors have secured the control of the charter of the Columbia and Kootenay Railway Company, and agreed with the Provincial Government that the railway shall be built, about thirty miles in length, during the present season, to connect the navigation waters of Kootenay Lake with those of the Columbia River, thus opening a line of steamboat and railway communication of more than 250 miles"

To assure control of the steamboat portions of this route the Canadian Pacific Railway Company in 1890 leased for 999 years the Columbia and Kootenay River Navigation Company.³² In 1893 the Company leased the Nakusp and Slocan Railway which connected the Upper Arrow Lake at Nakusp with the Slocan mining district.³³ Between 1893 and 1896 a branch was built from the main line of the Canadian Pacific Railway at Revelstoke to Arrowhead on the Upper Arrow Lake.³⁴ Over the same years the Company constructed and acquired various short lines to serve the mining area more effectively.

Meanwhile a variety of factors pointed to the desirability of a rail line linking the Kootenay with the main line of the Canadian Pacific Railway by way of Crow's Nest Pass. In the first place, such a line would give an all-rail entry to the region from Canadian territory while the link at Revelstoke was rail-lake-and-rail, with the resultant necessity for transshipments. Second, great resources of coking coal were found at the Crow's Nest Pass. Third, rail connections were already constructed from the Prairies toward the Crow's Nest Pass in a line built in 1885 from Dunmore, Alberta, to Lethbridge for the development of coal properties in the Lethbridge region. In 1892 the Dominion government made statutory provision for the extension of this line through the Crow's Nest Pass to Hope, British Columbia. The Canadian Pacific Railway Company proposed the absorption and extension of this line. The Annual Report of 1892 contains the following statement:³⁵

"Negotiations are pending with the Alberta Railway and Coal Company for the lease and subsequent purchase of that Company's line extending from Dunmore to the coal mines at Lethbridge, 109 miles. Your authority will be asked to lease the line in question at a rental of 40 per cent. of its gross earnings on its being brought to your Company's standard, and to

³¹ *Ibid.*, p. 18.

³² Innis, H. A., *A History of the Canadian Pacific Railway* (Toronto, 1923), p. 141.

³³ *Ibid.*, pp. 141-2.

³⁴ *Ibid.*, p. 142.

³⁵ Canadian Pacific Railway, *Annual Report for the year 1892*, p. 12.

purchase it on or before December 31st, 1897, at the rate of \$9,000 per mile. This line will be necessary to your Company in the event of the construction of a line through Crow's Nest Pass, and in any case it will be quite self-supporting."

The lease and option were entered into on June 1, 1893.

By 1896, therefore, the Canadian Pacific Railway had contemplated the construction of the Crow's Nest Pass Railway for several years. Its construction could not be postponed indefinitely. In 1896, the directors of the Company reported:³⁶

"But even with these important additions to its facilities for handling the traffic of the mining districts, your Company will continue at a disadvantage in competing with the American lines (which have already reached Nelson, Rossland and other important centres in these districts) until it shall have direct railway connections of its own. Until then the greater part of the mining traffic will be beyond its reach, and will continue to be, as at present, carried by the American lines southward.

"Your Directors are strongly of the opinion that any delay in securing your interests in that direction will be extremely dangerous,—that unless your Company occupies the ground others will, the demand for shipping and travelling facilities being most urgent. The Directors feel that they cannot too strongly urge the immediate construction of a line from Lethbridge to a connection with your Columbia & Kootenay Railway at Nelson, a distance of 325 miles, and anticipating your approval they have already taken steps towards commencement of the work on the opening of spring."

The same Annual Report (1896) carries the first reference made in such reports to the possibility of government assistance in the construction of the Crow's Nest Pass line. The reference appears in the following words: "The interests of the country at large are so much concerned in this question [of a Crow's Nest Pass Railway] that your Directors confidently expect reasonable assistance at the hands of the Dominion Government."³⁷

It is clear that the Canadian Pacific Railway intended the construction of the Crow's Nest Pass line for several years before it was finally constructed and before there was clear assurance and perhaps even consideration of a government subsidy. Though construction might have been delayed without a subsidy, the construction of the line would nevertheless have taken place.

The Crow's Nest Pass branch was eventually built in conformity with a subsidy and rate-control agreement made between the federal government and the Canadian Pacific Railway Company. The agreement, in turn, was entered into under a federal statute of 1897 (*Statutes of Canada*, 60-61 Vic., c. 5). The government agreed to grant the Canadian Pacific Railway Company a subsidy of \$11,000 per mile, but not exceeding a total of \$3,630,000, for the construction of a railway from Lethbridge, Alberta, through the Crow's Nest Pass to Nelson, British Columbia. The Company, on its part, agreed to build the railway to specifications as to standard, location and time; it agreed to permit control of certain of its rates; and it agreed to introduce specific reductions in certain other rates. The national interest was of such impelling importance that the federal political parties of the day could disagree over the details of the subsidy proposals but not at all over the basic question of the subsidy itself. The Conservative Government had, in fact, proposed a subsidy for a Crow's Nest Pass line in the session of 1896, the last session before the Liberals were returned to power.

³⁶ *Annual Report of the Canadian Pacific Railway Company for the Fiscal Year Ending December 31st, 1896*, p. 10.

³⁷ *Ibid.*, pp. 10-11.

From contemporary sources it is possible to summarize the major advantages which the federal government and the Canadian Pacific Railway Company, respectively, anticipated from the implementation of the Crow's Nest Pass Agreement. The evidence suggests that the federal government passed the Crow's Nest Pass Act and entered into the corresponding Agreement with the Canadian Pacific Railway Company in order to accomplish the following objectives: (1) the more rapid development of the highly promising mining area of southern British Columbia, (2) the effective integration of this area into the Canadian economy in defiance of geographic facts and despite American designs, (3) the enlargement of the prairie and inter-mountain markets for eastern manufacturers through the provision of lower freight rates on the western movement of certain important products, (4) the stimulation of agricultural settlement and general economic expansion in the prairie provinces by means of the statutory assurance of lower rates on grain and on the inward movement of capital equipment, and (5) the acceptance by the Canadian Pacific Railway Company of the principle of governmental rate control in the national interest.

To the Canadian Pacific Railway Company the Crow's Nest Pass Agreement offered at least the following advantages: (1) the subsidy, more substantial than that considered by the previous government, would pay, according to the Company's own recorded estimates, upwards of one-half of the cost of the Crow's Nest line, (2) construction of this line would entitle the Company to a large land subsidy indirectly from the Province of British Columbia, (3) the line would provide an all-rail link between the Company's main line and the Kootenay region, and (4) it would thus be possible to forestall American economic occupation of that wealthy area and to secure for the Canadian Pacific Railway Company first claim upon the traffic benefits to be derived from economic development in the southern Canadian Cordillera.

As pointed out earlier in this analysis it was originally taken for granted that a significant part of the paying traffic of the Canadian Pacific Railway should come from the movement of goods and persons between Europe and the Orient. Intense international competition rendered it essential that every facility should be extended to the Canadian company to enable it to secure a share of this valuable carrying trade. The articles of incorporation (Section 26) accordingly empowered the Company to own and operate "steam and other vessels for cargo and passengers upon any navigable water, which the Canadian Pacific Railway may reach or connect with." This provision permitted the establishment and great expansion of the inland steamship services upon the Great Lakes, and even more particularly upon the lakes and rivers of British Columbia, which the Company had attained by the end of the century. It also permitted the establishment of trans-Pacific, trans-Atlantic and coastal steamship services by the Company in the decades following the completion of the main railway line.

The first of the ocean services of the Canadian Pacific Railway Company was established on the trans-Pacific run. Of this service the Company said before the Royal Commission on Transportation in 1949:³⁸

"A steamship line from the Company's British Columbia terminus to the Orient was integrally related with its plan for a Canadian transcontinental railway. George Stephen, first President of the Canadian Pacific Railway Company, wrote in 1885 that the railway would not be complete 'until we have an ocean connection with Japan and China.' Before the first trans-Canada train had left Montreal for British Columbia arrangements had been made for a service across the Pacific which, starting with chartered tonnage in 1886, was established with its own 'Empress' ships in 1891, and provided,

³⁸ *Submission of Canadian Pacific Railway Company to the Royal Commission on Transportation* (Montreal, October, 1949) Appendix to Part I, p. 21.

up to the beginning of World War II, regular sailings between Vancouver, Victoria and Honolulu, Japan, China and Manila. . . .”

While the three chartered vessels of the Pacific service inaugurated in 1886 were in operation the Company made arrangements to have the Empress vessels built for Company ownership. These arrangements included the assurance of annual subsidies from the Imperial and the Canadian governments. A federal statute of 1889 (52 Vic. c. 73) made special provision for the financing of the new commitments. By 1891 the Company-owned luxury ships, the Empresses of India, China and Japan, were running from Vancouver and Victoria to Japan and China. In 1903 the Canadian Australian line (later renamed the Canadian Australasian Line) was established under traffic arrangements with the Canadian Pacific Railway Company to provide service between Vancouver and Australia.

In 1897 the Company organized the Klondyke service from Vancouver-Victoria to Skagway, and in 1901 purchased the vessels of the Canadian Pacific Navigation Company to organize the British Columbia coastal service embracing notably the cities of Vancouver, Victoria and Seattle.

The Company entered the Atlantic service in 1903 with the purchase of fifteen ships (the Beaver Line ships) of the Elder Dempster Lines Limited. In 1917 the Company acquired the Allan Line thus adding eighteen vessels to its Atlantic fleet.

VII

The legal instruments which created the Canadian Pacific Railway Company and established its original powers and privileges have been amended dozens of times in the seventy years since they were first enacted. The great majority of the amendments were of a purely routine nature. A substantial number of amendments merely authorized the extension of the railway operations of the Company by approving the acquisition of the properties and franchises of particular railway companies or groups of companies. Another substantial group of amendments had to do with the financial requirements of the Company and provided for the modification of its financial structure to bring it into accord with the changing needs created by tremendous expansion. Very few of the amending statutes broadened the *range* of activities originally permitted to the Company. The great proportion of the amendments, we might say, were quantitative rather than qualitative. For the most part they sanctioned the Company to perform on an enlarged scale the various activities permitted in 1881, or to finance these activities in modified ways. Only rarely were amendments enacted which permitted new and additional activities to the Company. Hon. Edward Blake remarked in 1880 that he did not know of anything the Canadian Pacific Railway Company was not, by the proposed charter, permitted to do. Retrospective observation over a period of seventy years suggests that there was very little which the Company could conceivably wish to do which was not in fact permitted by its remarkable charter.

An Act of 1902 (2 Edw. VII, c. 52) is by far the most important exception to the general facts outlined in the preceding paragraph. Five sections of this Act extended new and additional powers to the Canadian Pacific Railway Company. These sections merit examination. Before we turn to this task, however, it should be mentioned in passing that an Act of 1919 (9-10 Geo. V, c. 80) gave to the Company the widest and most unrestrained powers relating to the acquisition, construction and operation of aircraft of all kinds. This statute constitutes another exception to the general facts outlined in the preceding paragraph, but an exception far less noteworthy than that embodied in the statute of 1902.

The relevant sections of the statute of 1902 (2 Edw. VII, c. 52) are as follows:

- | | |
|--|---|
| Power to hold land, buildings, etc. | 7. The Company may purchase, rent, hold and enjoy, as well in Canada as in such other places as are deemed expedient for the purposes of the Company, and either in the name of the Company or in the name of trustees for the Company, such lands, wharfs, docks, warehouses, offices, elevators and other buildings as it may find necessary and convenient for its purposes, and sell or dispose thereof for the purposes of the Company, and may take, hold and dispose of shares in any companies having for one of their objects the purchase, renting, taking, holding and enjoying of lands, wharfs, docks, warehouses, offices, elevators and other buildings, in Canada or elsewhere, to be used for the purposes of the Company or its steamship connections. |
| Shares in land and building companies. | |
| Hotels and restaurants. | 8. The Company may, for the purposes of its railway and steamships and in connection with its business, build, purchase, acquire or lease for hotels and restaurants, such buildings as it deems advisable and at such points or places along any of its lines of railway and lines operated by it or at points or places of call of any of its steamships, and may purchase, lease and hold the land necessary for such purposes, and may carry on business in connection therewith for the comfort and convenience of the travelling public, and may lay out and manage parks and pleasure grounds upon the property of the Company and lease the same from or give a lease thereof to any person, or contract with any person for their use, on such terms as the Company deems expedient. |
| Mining and smelting. | 9. The Company may, in order to utilize its land grant and the land grants of other railway companies owned or controlled by the Company, in so far as they are available for mining and lumbering operations, engage in general mining, smelting and reduction, the manufacture and sale of iron and steel and lumber and timber manufacturing operations upon such lands or in connection therewith, and may sell and dispose of the products thereof, and may also make such agreements with actual or intended settlers upon such lands as it deems expedient for promoting the settlement and cultivation thereof, including the advancing of moneys for such purposes and upon the security of the lands settled upon respectively. |
| Iron and steel manufacture.
Lumber. | |
| Electricity. | 10. The Company may, in connection with its business or for the purposes of its undertakings, acquire or construct and operate such buildings and works as are necessary for generating and transmitting electricity, and sell or otherwise dispose of surplus power so generated and not required for operating its railways and other works. |
| Irrigation. | 11. The Company may excavate, construct, maintain and operate irrigation ditches or canals upon its lands for supplying water for irrigating any portion of such lands and for supplying water for irrigation, water-power or other purposes to municipalities, cities or towns, and to individuals, corporations or companies holding lands contiguous to the lands of the Company, and, for the purposes aforesaid, generally exercise the powers of an irrigation company. |

If there were any doubt concerning the adequacy of the powers of the Canadian Pacific Railway Company as provided by their charter and its amendments before 1902 there could be few doubts remaining after the passage of the Act of 1902. To summarize the powers granted in the sections cited they include, in reverse order, specific permission to the Company: to operate as an irrigation company; to generate and transmit electricity and to sell the surplus above their own requirements; to engage in the mining, smelting and reduction of ores, and in the manufacture and sale of iron and steel and of lumber and timber; to build, purchase, acquire or lease premises for hotels and restaurants; and, finally, to rent, hold and enjoy, within or without Canada, lands, wharves, docks, warehouses, offices, elevators and other buildings.

Broad as were the extensions of powers granted by the statute of 1902, however, the new and additional powers were not granted without restriction. The wording of the various sections of the statute makes it clear that the Parliament of Canada had no intention that the beneficiary of the statute, the Canadian Pacific Railway Company, might henceforth or at any time exercise its additional powers as ends in themselves or for purposes divorced in any way from the purposes for which the Company was originally formed. Consideration of the wording of the individual sections leaves no room for doubt on this score.

Section 7 permits the Company to acquire, hold and enjoy, in and out of Canada, only such of the various facilities enumerated therein "as it may find necessary and convenient for its purposes;" and, likewise, to sell or dispose of these facilities "for the purposes of the Company;" and, finally to acquire or dispose of any of the enumerated facilities by means of share transactions, with the specific proviso that the facilities are "to be used for the purposes of the Company or its steamship connections."

The repeated reference in this section to "the purposes of the Company" can not be regarded as mere legal verbiage. The statute of 1902 did not define or extend the purposes of the Company. It was recognized by Parliament that these purposes had long since been defined and it was the intent of Parliament, clearly and repeatedly stated in this Act, that the additional powers granted to the Company were to be exercised only in so far as they might contribute to these purposes.

Section 8 of the statute of 1902 permits the Company to acquire premises for hotels and restaurants. The permissive means of acquisition are numerous, and the business conducted in connection with the premises may be "for the comfort and convenience of the travelling public." The entire permission of the section, however, is to be used "for the purposes of [the Company's] railway and steamships and in connection with its business."

Section 9 contains a variety of important powers. Under its generous sanction the Company may engage in "general mining, smelting and reduction [of ores], the manufacture and sale of iron and steel and [in] lumber and timber manufacturing operations." These sweeping powers were given, however, for a specific purpose and were to be exercised within the limits of that purpose. The Act permits the activities enumerated in this section "in order [for the Company] to utilize its land grant and the land grants of other railway companies owned or controlled by the Company, in so far as they are available for mining and lumbering operations." The remainder of section 9 is also directed toward the better utilization by the Company of its land grants, particularly its agricultural lands. The Company may, under this section, promote the settlement of its lands by any expedient agreement and advance monies on the security of the lands for that purpose. The legislators did not contemplate in this section a company which would embark upon lumbering, mining, smelting and manufacturing in general, or enter into the agricultural loan business, except for the better utilization of its land grants.

Section 10 carries permission for the Company to manufacture and transmit electricity "in connection with its business or for the purposes of its undertakings" and to sell or dispose of any surplus power "so generated and not required for operating its railways and other works." This is obviously not a power given to permit diffusion of the Company's interests but rather one given to render the Company the better able to fulfil its purposes among which the central object remains that of operating a railway.

Section 11 permits the Company to exercise the powers of an irrigation company for irrigating any part of its own or contiguous lands.

VIII

Dr. Fowke's evidence as presented before the Board of Transport Commissioners concluded with the preceding paragraph. As evidence, the analysis was factual and was deliberately divorced from argument. It was also presented without summary or conclusions in order that it might avoid the slightest suggestion of argument. Since the analysis has served its purpose as evidence, however, the Government of Saskatchewan considers that the reader is entitled to find in this publication a summary and a brief statement of the main implications of the facts recounted.

In brief review the main facts which emerge from the analysis are the following.

First, Canadian Pacific Railway Company clearly emerges from the historical study as an instrument of national policy. It was projected and created as such an instrument and its development to the present day has proceeded exclusively within the framework of national design. Along with Confederation as the constitutional instrument and with appropriate land and immigration policies the Pacific railway constituted an absolute essential for the creation of a Canadian nation. American continental imperialism, in full flood after the middle of the nineteenth century, threatened to absorb all British territories from the Great Lakes to the Pacific Ocean. A transportation and communication system which would link the Province of Canada with the Pacific and which would run exclusively through Canadian territory was indispensable if this threat were to be averted. The Canadian Pacific Railway Company was incorporated and generously endowed by the people of Canada to build the railway and to operate it in perpetuity. The perpetual operation of the railway system, no less than its construction, was a national imperative.

Second, the Canadian Pacific Railway Company was not created as an ordinary corporation with complete freedom to establish the prices for its services subject only to the general laws of the land. Nor was it created as an ordinary railway company. The legislation which established it gave recognition to its distinctive character by providing that its rates were to be subject to more restrictive control than that provided in the railway act for railways in general. The Company was subsidized through substantial gifts of money, land and completed line and was given additional pecuniary benefits in the form of tax and duty exemptions and monopoly powers regarding location. These incentives were designed to induce the shareholders to undertake the project with a reasonable chance of satisfactory conclusion. The benefits were of sufficient magnitude to mark the Company as the recipient of exceptional public favour and to warrant its treatment as the bearer of exceptional public obligation.

Finally, the Canadian Pacific Railway Company has developed in the course of three quarters of a century into a corporate system of great size and of extreme complexity. It is engaged in a great variety of diverse activities with ramifications

extending throughout the world. Some of these activities appear to have little relation to the operation of a railway system. A careful examination of the origins and evolution of the Company indicates that these activities have full and specific legislative sanction. Such an examination also indicates that the authority was granted by Parliament in each case with a view to facilitating the operation of the railway system. The latest extensive expansion of the powers of the Canadian Pacific Railway Company was provided by legislation in 1902. The new powers were highly diverse and included, for example, permission to the Company to operate as an irrigation company; to generate, transmit and sell electricity; to engage in the mining and smelting of ores and in the manufacture of iron and steel and of lumber and timber; and to operate hotels, restaurants, docks, warehouses, offices and elevators. It is significant, however, that the legislation which extended these powers specifically restricted their utilization by the phrase "for the purposes of the Company." These purposes were not defined or extended by the new legislation. The obvious inference is that Parliament regarded the purposes of the Company as long-since clearly defined and not subject to change. These purposes were defined, from the inception of the Company, as the construction and perpetual operation of the Pacific railway.

The facts outlined in some detail in the preceding pages and summarized briefly above point to a number of important conclusions. Among the most important of these is that the Canadian Pacific Railway Company was designed and created by the Canadian Parliament as a corporate entity with a single national purpose or group of purposes and that the Canadian Parliament has at no time altered its view that the Company was to be regarded and treated as such. Any claim that the Company possesses a dual personality, that it embodies within itself a rail enterprise and a non-rail enterprise, must categorically be denied. When such a claim is advanced for the purpose of lending a semblance of reasonableness to policy the claim must be disregarded as being based on a fundamental misconception of reality. Any application of the Canadian Pacific Railway Company for a rate base and rate of return is insupportable except on the assumption that the Company is dual in nature and that it includes a rail enterprise and a non-rail enterprise as well. The evidence has made it abundantly clear that this assumption is unsound.

